

The Burger Court Opinion Writing Database

*Chemical Manufacturers Association v.
Natural Resources Defense Council, Inc.*
470 U.S. 116 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 20, 1984

Re: ¹⁰¹³ 83-~~1031~~ - Chemical Manufacturers Association v.
NRDC
83-1373 - Environmental Protection Agency v.
NRDC

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

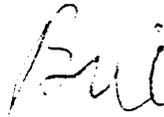
CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 14, 1985

No. 83-1013) Chemical Manufacturers Ass'n
) v. Natural Resources
) Defense Council, Inc.
)
) United States
) Environmental Protection
) Agency v. Natural
) Resources Defense
No. 83-1373) Council, Inc.

Dear Byron,
I agree.

Sincerely,



Justice White
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 13, 1984

Re: 83-1013 -

Chemical Manufacturers Ass'n v NRDC

Dear Chief,

As I recall it, after some waffling at last Friday's conference, I delayed voting in this case. I have given the matter additional attention, and although I still have some doubt, I now vote to reverse.

Sincerely,



The Chief Justice

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1013 AND 83-1373

CHEMICAL MANUFACTURERS ASSOCIATION,
ET AL., PETITIONERS
83-1013
v.
NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
83-1373
v.
NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[December —, 1984]

JUSTICE WHITE delivered the opinion of the court.

This case presents the question whether the Environmental Protection Agency (EPA) may issue certain variances from toxic pollutant effluent limitations promulgated under the Clean Water Act, 33 U. S. C. § 1251 *et seq.* (1982).¹

I

As part of a consolidated lawsuit, respondent National Resource Defense Counsel (NRDC) sought a declaration that § 301(l) of the Clean Water Act, 33 U. S. C. § 1311(l) (1982), prohibited EPA from issuing "fundamentally different factor" (FDF) variances for pollutants listed as toxic under the

¹ Hereinafter, the Clean Water Act will be referred to, interchangeably, by its entire name or simply as the Act.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 13, 1985

83-1013 - Chemical Manufacturers Ass'n
v. Natural Resources Defense Council, Inc.

83-1373 - United States EPA v. Natural
Resources Defense Council, Inc.

Dear Thurgood,

I shall respond in minor ways to your very good dissent. As I see it, there is little or no difference in principle between us, and administrative law will not be measurably advanced or set back however this case is decided.

We do differ and are plainly at issue, however, on whether the statute can accommodate the administrative construction. You think it cannot. The Conference vote, if it holds, was that there is room for the agency's view to work itself out.

Cheers,



Justice Marshall

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: FEB 14 1985

Recirculated: _____

4/12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1013 AND 83-1373

CHEMICAL MANUFACTURERS ASSOCIATION,
ET AL., PETITIONERS

83-1013

v.

NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, PETITIONER

83-1373

v.

NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1985]

JUSTICE WHITE delivered the opinion of the court.

These cases present the question whether the Environmental Protection Agency (EPA) may issue certain variances from toxic pollutant effluent limitations promulgated under the Clean Water Act, 33 U. S. C. § 1251 *et seq.*¹

I

As part of a consolidated lawsuit, respondent National Resources Defense Counsel (NRDC) sought a declaration that § 301(l) of the Clean Water Act, 33 U. S. C. § 1311(l), prohibited EPA from issuing “fundamentally different factor”

¹ Hereinafter, the Clean Water Act will be referred to, interchangeably, by its entire name or simply as the Act.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 8, 1985

MEMORANDUM TO THE CONFERENCE

Re: 83-1013 and 83-1373 -

Chemical Manufacturers Ass'n v. Natural
Resources Defense Council, Inc.

United States Environmental Protection Agency
v. Natural Resources Defense Council, Inc.

Because of an apparent inconsistency between a statement in note 9 and two observations on page 10, it has been suggested that the indicated changes on page 10 be made in the Court's opinion. I think the changes are appropriate and unless there is objection, I shall so instruct the reporter.

BW

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 18, 1984

Re: Nos. 83-1013 and 1373-Chemical Manufacturers Association and
United States EPA v. Natural Resources Defense Council

Dear Byron:

In due course I will prepare a dissent.

Sincerely,

J.M.
T.M.

Justice White

cc: The Conference

INTRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: FEB 5 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1013 AND 83-1373

CHEMICAL MANUFACTURERS ASSOCIATION,
ET AL., PETITIONERS
83-1013
v.
NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

UNITED STATES ENVIRONMENTAL PROTEC-
TION AGENCY, PETITIONER
83-1373
v.
NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1985]

JUSTICE MARSHALL, dissenting.

In this case, the Environmental Protection Agency (EPA) maintains that it may issue, on a case-by-case basis, individualized variances from the national standards that limit the discharge of toxic water pollutants. EPA asserts this power in the face of a provision of the Clean Water Act that expressly withdraws from the agency the authority to "modify" the national standards for such pollutants. The Court today defers to EPA's interpretation of the Clean Water Act even though that interpretation is inconsistent with the clear intent of Congress, as evidenced by the statutory language, history, structure, and purpose. I had not read our cases to permit judicial deference to an agency's construction of a statute when that construction is inconsistent with the clear intent of Congress.

Stylistic changes

p.1

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: _____

FEB 15 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1013 AND 83-1373

CHEMICAL MANUFACTURERS ASSOCIATION,
ET AL., PETITIONERS

83-1013

v.

NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, PETITIONER

83-1373

v.

NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1985]

JUSTICE MARSHALL, with whom JUSTICE BLACKMUN and
JUSTICE STEVENS join, and with whom JUSTICE O'CONNOR
joins as to Parts I, II, and III, dissenting.

In this case, the Environmental Protection Agency (EPA)
maintains that it may issue, on a case-by-case basis, individ-
ualized variances from the national standards that limit the
discharge of toxic water pollutants. EPA asserts this power
in the face of a provision of the Clean Water Act that ex-
pressly withdraws from the agency the authority to "modify"
the national standards for such pollutants. The Court today
defers to EPA's interpretation of the Clean Water Act even
though that interpretation is inconsistent with the clear in-
tent of Congress, as evidenced by the statutory language,
history, structure, and purpose. I had not read our cases to
permit judicial deference to an agency's construction of a

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 28, 1984

Re: No. 83-1013, Chemical Manufacturers Association
v. Natural Resources Defense Council, Inc.
No. 83-1373, United States Environmental Protection
Agency v. Natural Resources Defense Council, Inc.

Dear Byron:

I shall await the dissent in this case.

Sincerely,



Justice White

cc: The Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 6, 1985

Re: No. 83-1013) Chemical Manufacturers Association
v. Natural Resources Defense Council, Inc.
No. 83-1373) EPA v. Natural Resources Defense Council Inc.

Dear Thurgood:

Please join me in your dissent in these cases.

Sincerely,

Justice Marshall

cc: The Conference

NOT REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

Supreme Court of the United States
Washington, D. C. 20543

December 19, 1984

83-1013 Chemical Manufacturers v. Natural Resources

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Supreme Court of the United States
Washington, D. C. 20543

December 19, 1984

Re: No. 83-1013) Chemical Manufacturers Association v.
) Natural Resources Defense Council, Inc.
 83-1373) United States Environmental Protection Agency v.
) Natural Resources Defense Council, Inc.

Dear Byron:

Please join me.

Sincerely,

Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

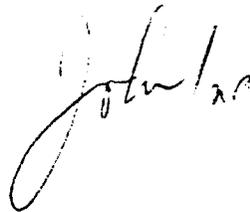
December 20, 1984

Re: 83-1013 and 83-1373 - Chemical
Manufacturers Assn. and United States
EPA v. Natural Resources Defense
Council

Dear Byron:

I shall wait for Thurgood's dissent.

Respectfully,



Justice White

Copies to the Conference



CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Supreme Court of the United States
Washington, D. C. 20543

February 7, 1985

Re: 83-1013 and 83-1373 - Chemical
Manufacturers Assn. and United States
EPA v. Natural Resources Defense
Council

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 19, 1984

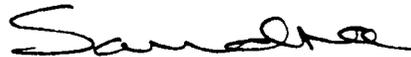
Re: 83-1013 Chemical Manufacturers Association, et al.
v. Natural Resources Defense Council,
Inc., et al.

83-1373 Environmental Protection Agency v. Natural
Resources Defense Council, Inc., et al.

Dear Byron,

For the present, I will await the dissent
in these cases.

Sincerely,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 11, 1985

No. 83-1013 Chemical Manufacturers Association
v. Natural Resources Defense Council
No. 83-1373 United States Environmental Protection
Agency v. NRDC

Dear Thurgood,

Please join me in Parts I, II and III of your dissent in these cases. I will probably circulate a paragraph explaining why I do not join Part IV.

Sincerely,



Justice Marshall

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: FEB 13 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1013 AND 83-1373

83-1013
CHEMICAL MANUFACTURERS ASSOCIATION,
ET AL., PETITIONERS
v.
NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

83-1373
UNITED STATES ENVIRONMENTAL PROTEC-
TION AGENCY, PETITIONER
v.
NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1985]

JUSTICE O'CONNOR, dissenting.

I join Parts I, II, and III of JUSTICE MARSHALL's dissent. They accurately demonstrate that the Court's interpretation of §301(l) of the Clean Water Act, 33 U. S. C. §1311(l) (1982), is inconsistent with the language of the statute and its legislative history. In my opinion, this alone is sufficient grounds for affirming the judgment of the Court of Appeals. I express no view as to Part IV of the dissent because I think it is not necessary to the disposition of these cases.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS